IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4105 of 2006(C)

CRA.243/2005 of VI ADDL. DIST. & SESSIONS COURT, ERNAKULAM
ST.1270/2005 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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REVN. PETITIONER: APPELLANT/ACCUSED

S.S.ALI, S/O. SAIDU MUHAMMED,
AGED 52 YEARS, SRAMBICKAL HOUSE,
VALLAM, RAYONPURAM P.O., PERUMBAVOOR.

BY ADV. SRI.C.K.ABDUL RAHIM
SRI.C.MOIDEEN KUTTY

RESPONDENTS: RESPONDENT/COMPLAINANT

THE SUB INSPECTOR OF POLICE,
PERUMBAVOOR, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

Crl. R.P. No. 4105 of 2006

Dated this the 6th day of December, 2006

ORDER

The petitioner is the accused in ST 1270 of 2005 on the file of the court of Judicial Magistrate of First Class, Perumbavoor. The offence alleged against him is under Section 51(a) of the Kerala Police Act. The judgment of the trial court reads thus: "accused is arrested and produced. No surety is present. Advocate is not present. Accused pleaded guilty. Accused is sentenced to pay a fine of Rs.200/- and simple imprisonment for one day and in default to undergo simple imprisonment for two days."

2. Challenging the conviction and sentence, the petitioner filed Crl.A. 243/2005 on the file of the Court of the District and Sessions Judge, Ernakulam. The appellate court dismissed the appeal and confirmed the conviction and sentence.

3. The petitioner herein raised a contention before the appellate court that he pleaded guilty without understanding the accusation against him and that he was not provided with copy of

the complaint/charge sheet. It was contended by the petitioner inter alia as follows:

The petitioner was a councillor of Perumbavoor Municipality. On 23.2.2005, at about 1 PM he was walking through the compound of the Magistrate's court, on his way to Perumbavoor-Kalady road. He saw Dy.S.P. of Police, with whom he had previous acquaintance, standing on the varanda of the court hall. The police officer wished him. The petitioner met the police officer at that time. The Police officer went inside the court room. Without noticing that the court proceedings were going on, the petitioner entered into the court hall and attempted to talk to the police officer. Immediately, the petitioner realised that the court proceedings were going on and therefore he went out of the court hall. The Magistrate got annoyed of the situation and directed the police constable who was present there to take the petitioner into custody. He was taken into custody and was brought to the police station. Thereafter he was taken for medical examination at the Taluk Head Quarters Hospital, Perumbavoor where the doctor

examined him. The report of the medical examination was not revealed to the petitioner. From the hospital, the petitioner was taken to the Magistrate's court. When he was produced before the learned Magistrate, the accusation was read over to him in a speedy manner. To a query whether he was admitting the guilt, the accused answered in the affirmative. He was under the impression and belief that the charge against him was in respect of causing disturbance to the court proceedings. He did not know at the time when he admitted the guilt that the offence alleged against him was under Section 51(a) of the Kerala Police Act. The learned Magistrate sentenced him to undergo simple imprisonment for one day, and a fine of Rs.200/-. It was contended that the procedural formalities under the Code of Criminal Procedure were not complied with and the petitioner was not given copy of the charge sheet or the certificate of drunkenness which was relied on by the prosecution. The accusation against the petitioner was not properly explained to him. The appellate court did not accept the contentions put forward by the petitioner and confirmed the conviction and

sentence. It is to be noted that the medical officer who examined the accused, though stated that the accused was drunk, gave an opinion that the accused was not under the influence of alcohol at the time of his examination. Therefore, on the basis of the certificate issued by the doctor, it cannot be found that the accused was incapable of taking care of himself. The case of the prosecution appears to be that petitioner/accused was taken into custody from the court hall. The allegation would disclose that the petitioner/accused behaved in a disorderly manner within the court hall of the Judicial Magistrate of First Class, Perumbavoor and caused disturbance to the proceedings of the court. There is no allegation in the complaint that the petitioner/accused was under the influence of alcohol or was found drunk or was incapable of taking care of himself. Therefore, I am of the view that conviction of the petitioner under Section 51(a) of the Kerala Police Act was improper. The statement made by the accused that he was guilty could only be related to the allegation made against him. Since there is no allegation that he behaved in a disorderly manner under the influence of alcohol or that he

was found drunk, the admission of guilt could not be in respect of the offence under Section 51(a) of the Kerala Police Act.

4. The fact remains that the accused pleaded guilty. It is stated in the complaint that he behaved in a disorderly manner in the court room. The appropriate provision under which the petitioner could be found guilty would be under Section 228 of Indian Penal Code. When an offence under Section 228 of the IPC is committed in the presence of the Magistrate, the accused could be dealt with under Section 345 Crl.P.C. and the accused could be sentenced him to pay a fine of Rs.200/-. I am of the view that the accused had committed and he stated that he had committed an offence under Section 228 of the Indian Penal Code which could be properly dealt with 345 Crl.P.C. Accordingly, the conviction and sentence imposed on the petitioner under Section 51(a) of the Kerala Police Act is set aside. The petitioner is found guilty for the offence under Section 228 IPC and he is sentenced to pay a fine of Rs.200/-. It is submitted that the fine amount of Rs.200/- had already been paid.

In the result, this Crl.R.P. is allowed in part.

(1) the conviction and sentence of the petitioner under Section 51(a) of the Kerala Police Act are set aside.

(2) the petitioner is found guilty for the offence under Section 228 of the Indian Penal Code and he is sentenced to pay a fine of Rs.200/- as provided under Section 345 of the Code of Criminal Procedure. In default of payment of fine, the petitioner shall undergo simple imprisonment for a period of one week.

K.T.SANKARAN,
JUDGE

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